

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
JOSE BLAS,)	
)	
Petitioner,)	Civil Action No. 04-CV-40211-NG
)	
v.)	
)	
DAVID L. WINN, Warden,)	
)	
Respondent.)	
_____)	

RESPONDENT'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), the Respondent, David Winn, hereby moves for dismissal on the ground that the Petition fails to state a claim upon which relief may be granted. In support of the motion, the Respondent submits that attached memorandum of law and exhibits.

Wherefore, the Respondent requests that the Petition be dismissed.

Respectfully submitted,
MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Jeffrey M. Cohen
JEFFREY M. COHEN
Assistant U.S. Attorney
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CERTIFICATE OF COMPLIANCE

The Respondent takes the position that L.R. 7.1 requires “counsel” to confer and is not applicable where, as here, the opposing party is *pro se*. Alternatively, because Petitioner is a prisoner currently incarcerated in a federal correctional facility, counsel for the Respondent respectfully requests leave to file this Motion without a 7.1 conference.

/s/ Jeffrey M. Cohen
Jeffrey M. Cohen
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November 2004, the foregoing document was served upon Petitioner, Jose Blas, Reg. No. 67734-053, FMC Devens, P.O. Box 879, Ayer, MA 01432 by mail.

/s/ Jeffrey M. Cohen
Jeffrey M. Cohen